

REMARKS

The Examiner has indicated in the pending Office Action that the Amendment and Response filed on October 21, 2004 "is non-responsive to the previous office action, mailed 3/15/04, because the claim amendments render all of the claims to be withdrawn because they fail to contain the elected set of nucleotide positions...Amending claims to contain the elected sequence and elected set of nucleotide positions is requested." Applicants traverse the foregoing requirement and maintain that the Examiner's Restriction Requirement is improper for the reasons of record. Furthermore, Applicants respectfully submit that there is no requirement that all of the elected species be set forth in one claim. However, in the interest of expediting prosecution, Applicants have addressed the Examiner's concern by adding new claims 144-146, which includes all six of the elected nucleotide positions of SEQ ID NO:1 (and the pending claims have been amended to depend therefrom). Accordingly, Applicants respectfully request entry of the claim amendments set forth herein and immediate prosecution on the merits.

Claims 1-7, 13-39, 44-48, and 63-134 have been canceled, without prejudice, as being directed to a non-elected invention. Claims 40 and 49 have also been canceled herein, without prejudice. Claims 8, 41, 42, 50, 51, 53, 56, and 58 have been amended and new claims 135-146 have been added. Accordingly, claims 8-12, 41-43, 50-62 and 135-146 are presently pending in the application.

Support for the above amendments and new claims can be found in the specification and claims as originally filed. In particular, support for new claims 136-143 may be found in the specification at, for example, page 7, line 27 through page 8, line 7 of Applicants' specification. Support for new claim 144 may be found in originally filed claims 40 and 41 of the specification. Support for new claim 145 may be found, at least at, page 4, lines 13-18 and in originally filed claims 56 and 58 of the specification. Support for new claim 146 may be found, at least at, page 9, lines 10-23 of the specification.

No new matter has been added. Cancellation of and/or amendment to the claims should in no way be construed as an acquiescence to any of the Examiner's rejections. The cancellation of and/or amendments to the claims are being made solely to expedite prosecution of the above-identified application. Applicants reserve the option to further prosecute the same or similar claims in the instant or in another patent application.

CONCLUSION

It is respectfully submitted that this application is in condition for allowance. If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' Attorney at (617) 227-7400.

Applicants believe no fee is due with this statement. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. MMI-003 from which the undersigned is authorized to draw.

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Respectfully submitted,

By DeAnn F. Smith
DeAnn F. Smith
Registration No.: 36,683
LAHIVE & COCKFIELD, LLP
28 State Street
Boston, Massachusetts 02109
(617) 227-7400
(617) 742-4214 (Fax)
Attorney/Agent For Applicants